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INFO OCT-01 EUR-12 IO-11 ISO-00 ERDA-05 AF-06 ARA-06

CIAE-00 DODE-00 EA-07 PM-04 H-02 INR-07 L-03 NASA-01

NEA-10 NSAE-00 NSC-05 OIC-02 SP-02 PA-01 PRS-01

OES-03 SS-15 USIA-06 SAJ-01 /121 R

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NSC:JMARCU M BY PHONE

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CIA:JINGLEY BY PHONE

OSD:JLANDAUER BY PHONE

JCS:CWILMOT BY PHONE

ERDA:RDUFF (PHONE) S/S:FORTIZ

OES:DJENKINS BY PHONE

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FM SECSTATE WASHDC

TO USMISSION IAEA VIENNA PRIORITY

INFO AMEMBASSY MOSCOW PRIORITY

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E.O. 11652:N/A DECONTROL 26 JANUARY 1976

TAGS: TECH, PARM, IAEA

SUBJECT: IAEA CONSULTANTS' MEETING ON LEGAL ASPECTS OF
PNES - INSTRUCTIONS

REF: STATE 232093

MOSCOW FOR TTBT/PNE DELEGATION

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1. USG REPRESENTATIVES ATTENDING THE IAEA CONSULTANTS'

MEETING ON LEGAL ASPECTS OF PNES SHOULD FOLLOW GENERAL INSTRUCTIONS CONTAINED REFTEL, IN PARTICULAR PARAGRAPHS 3, 5, 7, 8 AND 9. ADDITIONAL INSTRUCTIONS ARE CONTAINED IN THE FOLLOWING PARAGRAPHS.

2. REPS SHOULD PARTICIPATE IN AN ACTIVE AND CONSTRUCTIVE MANNER IN HELPING TO IDENTIFY KEY LEGAL ISSUES RELATED TO PNE SERVICES. THEY SHOULD TAKE THE POSITION THAT EFFORTS OF THE CONSULTANTS' MEETING SHOULD ASSIST THE AD HOC PNE ADVISORY GROUP IN MAKING RECOMMENDATIONS TO THE BG WITH RESPECT TO THE BASIC STRUCTURE AND KEY CONTENT OF THE AGREEMENTS REFERRED TO IN ARTICLE V OF THE NPT, WITHOUT NECESSARILY GETTING INTO FINE DETAIL.

3. REPS SHOULD SEEK EARLY OPPORTUNITY TO MAKE STATEMENT OUTLINING GENERAL U.S. VIEWS ON LEGAL ASPECTS. STATEMENT SHOULD INCLUDE FOLLOWING POINTS:

-- THE PURPOSE OF NPT ARTICLE V WAS TO ENSURE THAT POTENTIAL BENEFITS OF PNES, IF AND WHEN REALIZED, WOULD BE SHARED ON A NON-DISCRIMINATORY BASIS WITH ALL NNWS PARTIES TO THE TREATY, NO SUPPLYING OBLIGATION FOR NWS EXISTS UNTIL POTENTIAL BENEFITS HAVE BEEN REALIZED. AS STATED AT THE NPT REVIEW CONFERENCE, THE U.S. HAS NOT YET REDUCED ANY APPLICATION TO PRACTICE, NOR HAS IT OBTAINED ANY COMMERCIAL BENEFITS FROM THIS TECHNOLOGY. IF AND WHEN THE U.S. SHOULD SUCCEED IN DOING SO, IT WOULD, OF COURSE, MAKE THESE BENEFITS AVAILABLE AS CALLED FOR IN THE TREATY.

-- ALL PNES MUST BE FULLY CONSISTENT WITH EXISTING TREATY OBLIGATIONS. BOTH THE SUPPLIER AND RECIPIENT STATES HAVE A RESPONSIBILITY TO ENSURE THAT A PROPOSED APPLICATION ENTAILS NO RISK OF VIOLATION OF ANY RELEVANT INTERNATIONAL AGREEMENT. IN PARTICULAR, THE LTBT PROVISIONS MUST BE STRICTLY OBSERVED.

-- WHILE THE USG WOULD EXPECT THE AGENCY TO TAKE AN INTEREST IN THE AMOUNT OF RADIOACTIVE DEBRIS EXPECTED TO BE PRODUCED BY A PROPOSED APPLICATION, THE DECISION AS LIMITED OFFICIAL USE

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TO WHETHER PROPOSED APPLICATIONS WOULD VIOLATE THE LTBT REMAINS WITH THE STATES PARTIES TO THE TREATY. THE USG WOULD EXPECT THE AGENCY NOT TO ALLOW ITSELF TO BECOME ASSOCIATED WITH ANY PROJECT WHICH WOULD CAUSE RADIOACTIVE DEBRIS TO BE PRESENT OUTSIDE THE BOUNDARIES OF THE STATE IN WHICH THE EXPLOSION WAS CONDUCTED.

-- WHILE THE AGENCY WOULD APPROPRIATELY PROVIDE ADVICE

TO PARTIES ENVISAGING A PNE APPLICATION, THE AGENCY HAS NO AUTHORITY TO RENDER JUDGMENTS ON COMPLIANCE WITH THE NPT OR OTHER APPLICABLE INTERNATIONAL AGREEMENTS BY STATES PARTIES. IT MAY, OF COURSE, EVALUATE THE CONSISTENCY OF AN APPLICATION WITH RELEVANT INTERNATIONAL AGREEMENTS FOR THE PURPOSE OF MAKING JUDGMENTS AS TO AGENCY PARTICIPATION.

4. REPS MAY ALSO DRAW ON THE FOLLOWING POINTS AS APPROPRIATE:

-- ACCORDING TO ARTICLE V, THE CHARGE FOR EXPLOSIVE DEVICES USED IN PNE APPLICATION IS THE ONLY CHARGE RELATED TO SUCH APPLICATION WHICH NEEDS TO BE AS LOW AS POSSIBLE.

-- BENEFITS MADE AVAILABLE TO NNWS PARTIES TO THE NPT THROUGH BILATERAL ARRANGEMENTS, PURSUANT TO ARTICLE V, MUST BE PROVIDED AT LOWEST POSSIBLE DEVICE-COST ALSO.

-- BECAUSE OF THE OBLIGATIONS OF NWS UNDER NPT ARTICLE I AND II, SUPPLIERS HAVE THE RIGHT TO INSIST THAT SECURITY MEASURES BE SATISFACTORY TO THEM BEFORE PROVIDING SERVICES.

-- SPECIAL STATUS ACCORDING PRIVILEGES AND IMMUNITIES TO INTERNATIONAL INSPECTION AND SUPPLIER STATE PERSONNEL INVOLVED IN CARRYING OUT OR OBSERVING PNE PROJECTS WILL HAVE TO BE PROVIDED BY THE RECIPIENT STATE.

-- THE EXPLOSIVE DEVICE MUST REMAIN AT ALL TIMES IN THE EXCLUSIVE CUSTODY AND CONTROL OF THE SUPPLIER STATE.

-- PURSUANT TO AGREEMENT BETWEEN THE SUPPLIER AND LIMITED OFFICIAL USE

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RECIPIENT STATES, ANCILLARY SERVICES ASSOCIATED WITH THE PNE APPLICATION MAY BE PROVIDED BY A STATE OTHER THAN THE STATE SUPPLYING THE PNE SERVICE.

-- ARTICLE V DOES NOT OBLIGATE SUPPLIER STATES TO ASSUME LIABILITY. THEREFORE, THE ISSUE OF LIABILITY FOR DAMAGES RESULTING FROM A PNE SHOULD BE NEGOTIATED AMONG ALL INTERESTED PARTIES.

5. IN DISCUSSION OF DRAFT WORKING PAPER PREPARED BY IAEA SECRETARIAT, REPS SHOULD MAKE CLEAR THAT PRESENT DRAFT HAS SERIOUS FLAWS WHICH MUST BE DEALT WITH BEFORE PAPER CAN BE FORWARDED TO ADVISORY GROUP. THEY SHOULD NOTE THAT PAPER HAS RAISED A NUMBER OF IMPORTANT LEGAL ISSUES WHICH THIS FIRST MEETING CAN ONLY BEGIN TO EXPLORE. DETAILED SUG-

GESTIONS FOR REVISION OF PAPER SHOULD BE BASED ON GUIDANCE
CONTAINED IN PARAS. 1 - 4. KISSINGER

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